



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

August 31, 2005

MEMORANDUM FOR: Selected CPD Field Office Directors-- Harold Cole/CPD/BIR/HUD, Ray E. Willis/CPD/CHI/HUD, Gregory J. Hamilton/CPD/NOR/HUD, Katie S. Worsham/CPD/FTW/HUD, Gus Smith/CPD/ANC/HUD, Kathy J. Mullins/CPD/NYN/HUD, Jack Peters/CPD/SEA/HUD, Steven B. Sachs/CPD/SFC/HUD, Mark A. Chandler/CPD/HON/HUD, Bob Paquin/CPD/BOS/HUD, Richard Hatin/CPD/MAN/HUD, Nadab Bynum/CPD/PHI/HUD

FROM: David Vos, Director, Office of HIV/AIDS Housing, DEH

SUBJECT: Post-Award Operating Instructions for the First 2005 HOPWA Renewal and New Project Grants - Performance Grant Agreements

I. INTRODUCTION AND BACKGROUND

This memorandum provides instructions to Field Offices for processing the 19 conditionally selected 2005 Housing Opportunities for Persons With AIDS (HOPWA) renewal and new project grants. Selections were made pursuant to the Department's 2005 Super Notice for Funding Availability (SuperNOFA) published on March 21, 2005. This memorandum provides information regarding the processing of the performance grant agreement, with approved conditions and revisions to award amounts. It also covers the funds disbursement system for these grants. The memorandum and attachments will be sent to the applicable HUD Field Offices by email to facilitate the preparation of letters and forms.

While similar to materials used for prior HOPWA competitions, this memorandum updates the grant agreement to allow conditions to be resolved, if needed, after the obligation of the performance contract. This was done as the five new projects and some of the renewal grants will be awarded about \$9.5 million in FY2004 funds and residual recaptured funds from earlier years that must be obligated before the end of September 2005, or be subject to cancellation. The agreement continues to specify the HUD-approved budget line items and the HUD-approved leveraging for these projects. Attachment 2 provides these approved amounts and any related conditions or alerts. Following any negotiation on these adjustments or additional submission by the grantee on this document, the attachment would be used as Exhibit B as a part of the signed performance grant agreement.

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HOPWA 2005 Competitive Award with FY Funding Source					
Type	ST	Applicant's Name	Amt. HUD appd	Note on BLI changes	FY \$ source
New	AL	Health Services Center	\$572,331	no	2004
New	IL	Heartland Human Care Services Inc-"Housing Project"	\$1,020,510	no	2004
New	IL	Heartland Human Care Services Inc-"First Step"	\$1,339,000	no	2004
New	LA	Odyssey House Louisiana, Inc.	\$1,388,000	cut in sp admin	2004
New	TX	City of Dallas	\$773,839	no	2004
Renewal	AK	Alaska Housing Finance Corporation	\$757,675	no	1997, 2004
Renewal	AL	AIDS Alabama	\$502,679	no	1997, 1999-2002, 2005
Renewal	NY	Greyston Health Services Inc	\$1,239,639	cut in sp admin (edit RA)	2004
Renewal	NY	Bailey House, Inc.	\$991,478	cut in SS, PHoPI & TBRA (edit STRMU)	2004
Renewal	WA	Spokane County	\$1,151,406	cut in STRMU, SS, RA to '02 levels	2004
		* 10 above require obligation in Sept.			
Renewal	CA	County of Alameda	\$1,425,362	no	2005
Renewal	HI	Maui AIDS Foundation	\$1,381,120	no	2005
Renewal	IL	AIDS Foundation of Chicago	\$1,132,016	cut in SS, TBRA	2005
Renewal	IL	Pioneer Civic Services	\$406,443	no	2005
Renewal	ME	Frannie Peabody Center	\$990,976	cut in TBRA & Ho Info	2005
Renewal	NH	State of New Hampshire	\$824,120	no	2005
Renewal	PA	Calcutta House, Inc.	\$741,268	cut in SS	2005
Renewal	TX	Tarrant County	\$916,010	no	2005
Renewal	VT	State of Vermont	\$1,227,657	no	2005

Please use the following guidance in managing these grant awards. These documents will be available on the HUD at Work website: (1) Attachment 1 on project descriptions from the HUD news release, which describe the conditionally selected awards and can be copied and used for public information; (2) Attachment 2 on grant conditions that will become a part of the grant agreement as Exhibit B. This will provide the HUD approved budget line items for each of these awards along with any grant conditions, alerts and review comments, and the HUD-approved commitments for leveraging; (3) Attachment 3 for a draft notification letter to transmit the grant agreement and any conditions on the additional information to be submitted, if needed; (4) Attachment 4 provides field offices with the HOPWA renewal and new projects performance grant agreement forms for 2005 which should be prepared in accordance with Attachment 2; (5) Attachment 5 for the HOPWA Regulations 24 CFR part 574 as of April 1, 2005; (6) Attachment 6 reserved; (7) Attachment 7 on grantee financial instructions; (8) Attachment 8 for a draft letter to send the signed documents; (9) Attachment 9 is reserved for the updated annual performance report and explanatory documents (omitted from this document as the new form is under revision); (10) Attachment 10 on HOPWA competitive grant extension; (11) Attachment 11 on changes of grant

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term form; and (12) Attachment 12 on early termination term form; -- note that items 11 and 12 would be used for adjusting the term of a current grant to coordinate with the startup of the renewal grant.

The selection of these 19 HOPWA awards totaling \$18.8 million, to renew funding for 14 permanent supportive housing projects and awards to five new projects that will undertake a special demonstration effort to use transitional housing and support to help move clients to more permanent housing arrangements by the end this one-time grant. These awards include funding to three States, four local governments, and eleven nonprofit organizations (one project has two grants). The grantees are geographically dispersed throughout the nation in 13 states. The selected projects are expected to reach 970 persons/households with permanent housing and supportive services assistance and 114 persons with transitional housing support, during the next three years of the grant term. These projects have demonstrated that they have committed \$27 million in leveraged funds from other sources to operate these housing and supportive services activities.

Thank you for ensuring that all the provisions of these instructions are implemented in an accurate and timely fashion.

II. ADDITIONAL REVIEWS AND CONDITIONS

(A) Budget & Policy Changes. Applications that received a grant amount different from their proposed budget are identified in Attachment 2 Performance Grant Conditions. This attachment provides information on the reason for any adjustment along with the identified commitments for planned housing outputs during each of the three years of grant activities and the HUD-approved commitment for other resources that were leveraged as part of this application. These conditions establish the expected key performance levels to be reviewed by HUD during the program operations.

(B) Notice Letters and Reviews. A draft notification letter (Attachment 3) has been prepared for field office use to request any additional information, as may be established as a condition on the grant prior to the signing of the grant agreement, as noted in Attachment 2. Send the letter to the applicant stating the grant amount and nature of the conditions that must be met before, or if needed after the performance grant agreement is executed, in order to obligate the FY2004 and earlier grant funds before they are cancelled at the end of September, 2005. The applicant must send information or documentation to clear these identified conditions directly to the field office and the field should oversee the issues identified as alerts as the grantee operates these awards. In some cases, this may result in an edit to the performance levels identified in Attachment 2 on housing outputs. In negotiating any changes in the terms of these performance contracts, please consult with the Office of HIV/AIDS Housing, as needed, if any substantial change is proposed. All identified conditions on the terms of the performance grant agreement must be resolved in writing with a preference that this be done before it is signed and executed, where possible, but allowing for the condition to be resolved after the agreement is executed and funds are obligated, when necessary to process the grants using FY2004 or earlier funds.

III. PREPARATION OF PERFORMANCE GRANT AGREEMENT

[NOTE –the next section was updated from prior operating instructions to clarify how to ensure that the approved budget line items, other negotiated changes and the commitments for outputs and match are implemented under this new award]

(A) Performance Contract Conditions. The field office is to complete the performance grant agreement, Attachment 4, and as noted above, ensure that the conditionally selected applicants submit the required technical information pertaining to an identified condition, if any, to HUD before signing this agreement, whenever possible, or after if needed to obligate these funds. A condition may involve a change to the application as submitted, for example, if HUD has not approved a portion of the application or has revised the budget or changed the scope of activities, as listed in identified conditions and approved budget line items established in attachment 2. As such, it will be necessary ensure that the performance grant agreement is executed by both parties with explicit understanding on how the HUD-approved changes are to be incorporated in connection with the application as submitted under the NOFA. As a standard practice, the application is incorporated as “Exhibit A” as part of the agreement, and this agreement relies on that application to delineate the project. As most applications were adjusted or involved conditions identified by HUD, the following language has been added to the standard performance grant agreement, as noted:

“Notwithstanding anything to the contrary in the application, grant funds must be used consistent with Exhibit B in establishing the HUD-approved budget line items, the other grant conditions or negotiated changes to the application, if any. The exhibit also provides for agreement on the grantee’s commitment for an expected level of housing output results to be achieved during each of the operating years under this award. The exhibit provides for the HUD-approved list of commitments for the use of other leveraged resources, if any. Failure to evidence the utilization or attainment of these commitments could result in a notice of default and affect the project’s continued access to these federal funds:” [see attachment Exhibit B]

(B) Regulations. The current HOPWA regulations, 24 CFR 574, must be attached to the end of the grant agreement and labeled as "Exhibit C." Each copy of the unsigned grant agreement must have an Exhibit C attached to it since competitive grants, unlike formula grants, are made subject to the regulations as they are in effect at the time of the application. Subsequent changes to regulations will not apply necessarily to these grants. In order that both grantees and HUD staff are acquainted with the program regulations and guidance that governs a grant throughout the term of the grant, and that the grantee and HUD staff have a readily available source of those rules, the proper regulation must be made a part of the grant agreement itself.

(C) Performance Grant Agreement and Operating Year dates. Field Offices will need to work with grantees on establishing the beginning date for their new award, as follows: (i) Performance grant agreements for renewal grantees must specify the dates for which the agreement will continue in force as provided in the attached form in connection with the grant termination and close-out of the existing agreement. A second edition of the performance grant agreement is draft for a new project award. As noted, HOPWA grant agreement forms used since 2001 specify the operating dates, as may be extended by a grant extension agreement (attachment 10). The regulations at 24 CFR 574.540, provide that HUD may deobligate funds remaining after a three-year use period for

the expenditure of funds based on the *date of the signing of the grant agreement*. However, as noted below, HUD will honor a commitment for a three-year operating period, as established in the grant agreement or longer, as may be extended for one additional year, if the extension is approved by HUD during the term of the original grant agreement.

For the purposes of this memorandum, there are two dates of key importance: (1) a “signing of the grant agreement” date, that is the date that HUD effectuates a grant agreement with a HOPWA grantee (i.e. the date of our grant agreement as provided under the signature line for HUD’s authorized official) and this date is used to authorize the obligation of the funds; and (2) a “operating period start date”, that is the date specified to in that document for the beginning of the operating period of this new grant. This date is to be specified in the second paragraph of the renewal grant agreement and it is used to begin the active use of the funds provided in these awards. An end date is also to be specified, and, except as may be specifically agreed to by HUD in the selection process, the end date is to be three years from the begin date. The operating period start date must be specified on the grant agreement, in the second paragraph, as follows:

The term of this Agreement shall begin on _____(mm/dd/yy) and end on _____(mm/dd/yy), or three years from the beginning date of this agreement, whichever comes first.

For renewal grantees, this will also state:

The term of this Agreement may not begin until the original grant agreement has expired.

This wording limits the period to not more than three years (in case some longer period is inadvertently inserted). Please alert the Office of HIV/AIDS Housing if a three-year operating period is not being proposed, as the use of a shorter period was not being solicited in our NOFA for renewal or new project efforts. Some grants were reduced due to mathematic error, subject to limits on the budget line items, due to the deletion of an ineligible activity or other similar condition, and these are still expected to operate for the full period, albeit at a potentially reduced level of results. Any changes to the planned housing outputs must be explicitly stated in the agreement, i.e. the number of households to be assisted with housing support during each of the three years of project operations.

(ii) Four-Month Window. As noted in instructions for annual progress reports since 1994, a grantee may establish a slightly delayed start date for their grant in order to conclude the activities on their prior grant or for efficient grants management reasons. The APR forms note that this start date could be up to four months following the date of the signing of the grant agreement. Generally, each operating year under the new award should be the 12-month period, which begins on the date which ends the prior grant (also see next section) and is so designated as the “beginning” date in the grant agreement. For the purposes of annual progress reports, the grantee and all project sponsors should document activities consistent with this operating period and the annual progress report is due to HUD within 90 days of the end of that 12-month period. Also, grant funds must be used under this award in a consistent and regular manner over this three-year period.

(D) Completion of Existing Project. As most of these are renewal grants, the additional funds

will help continue existing activities and should be coordinated with the completion of activities funded under the existing grant. Those renewal grantees with the best recorded performance in PAS were selected to make use of the balance in FY2004 or earlier funds. HUD and the grantee may reach agreement on establishing a new date for ending the existing prior grant, in coordination with establishing a start date for their new award. As may be needed, a grantee should complete attachment 12, changing the term of their existing agreement, in order to allow the remaining funds to be subject to the new agreement in coordination with the delivery of support under the renewal award. The grant agreement for the renewal grant carries the authority to use funds under the LOCCS account that was established under the older grant number. Funds in this account should be used for disbursements in advance of using the new account. However, if the grantee and HUD identify residual funding for activities that are no longer needed, HUD and the grantee should reach agreement for recapturing these funds. In undertaking a recapture action, HUD should ensure the grantee has made any final draw down for costs incurred during the active grant period.

Please use these general guidelines on how to complete prior projects:

- (i) In the situation where the prior grant has been fully expended and expired, please resolve any conditions and commit funds as soon as practicable, and consider allowing for pre-award costs, as described below in (F). If the agreement is in its final year and not yet expired, but all funds are expended, please use the form provided in attachment 12 to end the prior agreement, in coordination with the new start date for their new award.
- (ii) In the situation where amounts remain to be expended under the prior grant, please resolve any conditions, as noted above, and (A) commit funds by establishing an operating start date that will begin on a date not later than four months from the new grant agreement signing date. This date should be established in order to coordinate the use of these remaining funds and to establish an end date of their existing grant, as may be revised by the form in attachment 12. Alternatively (B), complete the form provided in attachment 11, to end the old agreement in coordination with establishing the new agreement operating start date, so that remaining funds are subject to the new agreement. If the end date of their prior grant is not established in that grant agreement, the grantee should use the form provided in Attachments 11 (rollover of funds) or 12 (no funds remain) to amend or establish an end date in the prior grant agreement.

Although the NOFA eligibility standards for renewals will screen out grantees that had more than 50 percent of funds unexpended, in rare situations there may be substantial funds remaining under the existing account. These amounts could be used during the limited remaining period of the existing grant (see (ii)(A) above), or added to the new grant (see (ii)(B) above), if this action is consistent with the HUD-approved application for that award, in the scale and scope of that award. The grantee must avoid increasing their on-going commitments that could result in a need for a level of excess spending that could not be sustained under their new award. To maintain performance consistent with the approved application's scale and scope of work, some funds may be identified for possible recapture, subject to the notice provisions of the grant agreement for grant defaults and appeals*. A large remaining balance on the prior agreement is likely to demonstrate an

underlying grants management issue that resulted in funds not being expended in a reasonable manner during the expected operating period of that existing grant. If funds are not to be carried over, the agreement needs to be revised to reflect this change, see the attached renewal grant agreement.

If remaining funds are to be used and subject to the new agreement, but also adjusted to coordinate with the startup of the new award, the grantee should provide you with a plan for the use of the remaining funds, such as the adjusted BLIs, so it is clear how such funds are to be expended and exhausted. The FO can include the language in the FY2005 grant agreement, provided below on the Attachment 11 draft so that the new grant agreement recognizes this transition from the old project funding authority.

The grantee agrees that the remaining funds in the HUD LOCCS account for the HOPWA grant, [existing grant number] on the date of this executed agreement, will be used for purposes described in this grant agreement and exhausted **first** on such eligible activities prior to the use of any new awarded funds. Further, any balance of funds in the [existing grant number] LOCCS account after December 31, 2005 will be returned to HUD. After this date, or on the exhaustion of all such prior funds if used prior to this date, the new renewal funds awarded in 2005 will be available for use in the LOCCS account for the [new grant number] grant. The grantee will provide HUD with a plan to distribute prior funds to the budget line items for eligible activities in order to maintain support for eligible persons under their prior program activities in coordination with the startup of the approved project activities under the 2005 award.

- NOTE: IN ADDITION, THE STANDARD HOPWA GRANT AGREEMENT PROVIDES THAT “[U]PON DUE NOTICE TO THE GRANTEE OF THE OCCURRENCE OF ANY SUCH DEFAULT AND THE PROVISION OF A REASONABLE OPPORTUNITY TO RESPOND, HUD MAY TAKE ONE OR MORE OF THE FOLLOWING ACTIONS: . . . RECAPTURE THE GRANT. HUD MUST PROVIDE THE GRANTEE WITH NOTICE AND A REASONABLE OPPORTUNITY TO RESPOND BEFORE RECAPTURE AS PROVIDED IN THE GRANT AGREEMENT. HUD SHOULD CHECK THE END DATES FOR AFFECTED EXISTING GRANTS TO ENSURE THAT THERE IS SUFFICIENT TIME TO PROVIDE THE GRANTEE WITH NOTICE AND A REASONABLE OPPORUNTIIY TO RESPOND BEFORE RECAPTURE.

(E) Common conditions for these grants. A number of the selected grants involve issues address in conditions placed on their use of the grant funds. For the 2005 grants, these conditions must be resolved before funding under this renewal is accessed (although funds can be obligated prior to these actions). In some cases the grantee must submit missing documents to complete their application and generally these have been standard forms such as the HOPWA Applicant Certifications (part of form HUD 40110-B), the Certification of Consistency with the Consolidated Plan (HUD-2991), the Disclosure of Lobbying (SF-LLL), if applicable, or the Applicant Disclosure Update Report (HUD-2880). The following provides some additional background on other common conditions.

(i) The Code of Conduct: As required by the General Section of the 2005 SuperNOFA, the applicant is required to submit a copy of their code of conduct and describe the methods they will use to ensure that all officers, employees, and agents of this organization are aware of your

code of conduct. The organization should submit a copy of the written code of conduct and a copy of the code for each project sponsor (see 24 CFR 84.42 and 85.36(b) (3)). The code of conduct must prohibit real and apparent conflicts of interest that may rise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by the organizations' officers, employees, and agents for their administrative and disciplinary actions available to remedy violations of such standards. Failure to meet the requirement for a code of conduct will prohibit the organization from receiving an award of funds from HUD.(Reference: Federal Register/Vol. 70 No 53/Monday, March 21, 2005/ Notice 13575-13974.)

(ii) Federal Debt Certification: The grantee is required to submit a certification (letter) to the HUD verifying that the organization is not in debt to the federal government. Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201 (e), no award of federal funds will be made to an applicant that has an outstanding delinquent federal debt unless (1) the delinquent account is paid in full, (2) a negotiated repayment schedule is established and the repayment schedule is not delinquent, or (3) other arrangements satisfactory to HUD are made prior to the deadline submission date. (Reference: Federal Register/Vol. 70 No 53/Monday, March 21, 2005/ Notice 13575-13974.)

(iii) Standard Lease or Occupancy Agreements to Document Permanent Housing. For the renewal grants, the grantee must show evidence that permanent housing is being provided, such that a household has a legal right to continue use of the housing unit, as shown in a standard lease or occupancy agreement. The agreement must be for a term of at least one year. The document must also be automatically renewable upon expiration, except on reasonable prior notice by either the tenant or landlord. The requirements governing termination of housing are located in 24 CFR 574.310(e). Failure to maintain this project documentation of the client's lease or occupancy agreement would constitute a grant default.

(iv) Transitional Housing Agreements. In contrast to item (iii), the NOFA FY 2005 requirement for the new SPNS demonstration projects (page 14111), involves the use of transitional support. Under this NOFA, "transitional housing" means facilitating the movement of eligible persons to permanent housing within 24 months. In addition, no more than half of the eligible persons may remain in the project longer than 24 months from the start date of this grant. Failure to observe this requirement will constitute a grant default, which could result in grant sanctions (including de-obligation).

(v) Health Care. The application may refer to the provision of supportive services including costs for accessing or providing health care support for participants. The FY 2005 NOFA prohibits direct HOPWA funding to be used for medications (such as AIDS drug assistance). IT also requires the recipients to comply with other limitation on the use of HOPWA funds for health care, as found at 24 CFR 574.310(a)(2) on payments, where payments are made or reasonably expected to be made from other sources. This is more detailed in the HOPWA memorandum on *Guidance on the Restricted Use of HOPWA Funds for AIDS Drug Assistance and Other Health Care Costs*, issued on January 21, 1998, noting the NOFA is more explicit on the matter of prohibiting costs for medications.

(vi) Drug and Alcohol Abuse Treatment and Counseling Activities: Applicants with support to help clients address these needs, must follow the following condition..

This application includes supportive service activities aimed at assisting HOPWA clients with substance abuse treatment. Note that, in operating this project, the grantee and any project sponsor must comply with federal, state and other applicable laws pertaining to the illegal use of a controlled substance. The grantee and sponsor must undertake reasonable steps to ensure that beneficiaries receive appropriate access to substance abuse treatment and counseling. Admission should be denied, or eviction initiated, for persons engaging in illegal drug activities, where such activities threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. Grantees and project sponsors must establish procedures for project ineligibility and evictions related to illegal drug activities.

(vii) Security Deposits. If the application proposes to provide security deposits, in some cases the activity had been previously funded as a “Rental Assistance” or STRMU Budget Line Item. The 2005 NOFA clarifies this matter and requires that such costs be reasonable and limited to not more than two months rent and classified as a supportive service under the part of the BLI shown as Permanent Housing Placement Costs. If needed grantees can quantify this effort and establish their plan for undertaking and reporting on this activity under this new BLI, subject to the overall limitations imposed on funds for the supportive service BLI (e.g. 35% of new grant activities or \$455,000 for renewal grant activities).

(viii) Drug-Free Workplace. Grantees are subject to this standard requirement, repeated from section III (4)(p) in the general section of the SuperNOFA (page 13580) for reference.

p. Drug-Free Workplace. If you receive an award of funds from HUD, you are required to provide a drug-free workplace. Compliance with this requirement means that you will:

(1) Publish a statement notifying employees that it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the applicant’s workplace and that such activities are prohibited. The statement must specify the actions that will be taken against employees for violation of this prohibition. The statement must also notify employees that as a condition of employment under the federal award that they are required to abide by the terms of the statement and that each employee must agree to notify the employer in writing of any violation of a criminal drug statute occurring in the workplace no later than five calendar days after such violation;

(2) Establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;
(b) The applicant’s policy of maintaining a drug-free workplace;
(c) Any available drug counseling, rehabilitation, or employee maintenance programs; and
(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Notify the federal agency in writing within 10 calendar days after receiving notice from an employee of a drug abuse conviction or otherwise receiving actual notice of a drug abuse conviction. The notification must be provided in writing to HUD’s Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street,

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SW, Room 3156, Washington DC 20410-3000, along with the following information:

- (a) *The program title and award number for each HUD award covered;*
- (b) *The HUD staff contact name, phone, and fax numbers; and*
- (c) *A grantee contact name, phone, and fax numbers; and*
- (4) *Require that each employee engaged in the performance of the federally funded award be given a copy of the drug-free workplace statement required in item (1) and notify the employee that one of the following actions will be taken against the employee within 30 calendar days of receiving notice of any drug abuse conviction:*
 - (a) *Institution of a personnel action against the employee, up to and including termination consistent with requirements of the Rehabilitation Act of 1973, as amended; or*
 - (b) *Requiring that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.*

(E) Commitment Deadlines. Grantees under these awards must have a beginning start date for their new award by no later than January 1, 2006, while the beginning date can be as early as the signing date for the grant agreement. As a matter of program policy, Field Offices are asked to ensure that the HOPWA grantee addresses the conditions and reach agreement with HUD allowing for the signing of the grant agreement by no later than September 15, 2005 for any grant assigned to use FY2004 or earlier funding and by December 1, 2005 for other grants (in order to provide sufficient time for the commitment of funds by HUD as needed.). As an additional consideration, the FY 2004 Appropriations Act requires HUD to *obligate* funds within two years of the effective appropriation date, (i.e. not later than September 30, 2005), or HUD and the designated recipient will lose access to these funds. The schedule noted above will allow HUD to meet this deadline.

Grantees receiving awards under the NOFA must fully expend their grants within three years following the beginning date of their operating period date of the grant agreement, or request from HUD during this period, and receive HUD's approval for a grant extension of up to one year from the grant end date shown on the executed grant agreement. If a renewal grantee receives the one-year extension, that grantee should not apply for renewal funds under the year before the expiration of the extension, consistent with the NOFA issued for that planned grant cycle. As an additional consideration, the applicable Appropriations Acts require that all grant funds awarded be *expended* within five years of the commitment (i.e. not later than September 30, 2010 for FY2004 funds or September 30, 2011 for FY2005 funds), or HUD and the designated recipient will lose access to these funds. This provision constrains the Department's authority to extend these new grants or otherwise allow grantees to retain balances on these accounts beyond this date.

(F) Pre-award costs. In cases where the original agreement has now expired and all funds expended, eligible costs under the new renewal award may include pre-award costs to support continuation of the approved renewal activities. Pre-award costs are allowable costs incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Pre-award costs are authorized by OMB Circulars A-87 and A-122, which are applicable to the HOPWA program under 24 CFR 574.605. Grantees are required to obtain written approval from HUD for incurring pre-award costs. The field office may authorize a renewal grantee to incur pre-award costs by adding the following language to the notification letter, Attachment 6:

From (insert the applicable notification date) until the effective date of your new grant agreement, you may be reimbursed for pre-award costs provided that such costs are included in the HUD-approved application and only to the extent that such costs would have been allowable if incurred after the effective date of the award. *

* NOTE: THE GRANTEE INCURS PRE-AWARD COSTS AT ITS OWN RISK AND THE APPROVAL IMPOSES NO OBLIGATION ON HUD. REIMBURSEMENT FROM FUTURE GRANTS IS CONTINGENT UPON THE FUTURE AVAILABILITY OF APPROPRIATIONS. LIKEWISE, SUCH REIMBURSEMENT WOULD BE CONTINGENT UPON THE COSTS BEING ELIGIBLE UNDER THE NOFA, APPLICABLE STATUTES, AND REGULATIONS, IN EFFECT AFTER THE DATE OF THE AWARD AS OPPOSED THE TIME IN WHICH THE EXPENSES ARE INCURRED. ANY COMMITMENTS OR EXPENDITURES INCURRED BY THE GRANTEE IN EXCESS OF THE FUNDS PROVIDED BY THE GRANT WOULD BE THE RESPONSIBILITY OF THE GRANTEE

Such costs may include costs incurred during the period following HUD's notification up to the date of the "beginning" date established in the grant agreement. The applicable notification dates from HUD are August 19, 2005 for the 14 renewal projects. Any grantee requesting this authorization would be undertaking activities at its own risk until the new agreement is approved and funds obligated. However, in some situations this may allow for the reimbursement of on-going project costs for these renewal efforts. After the date of the grant agreement, such costs may be reimbursed provided that the costs are for activities that are approved in the grant application and are in compliance with program requirements. The pre-award authority should not be used for the startup of new projects.

(G) Staff costs assigned by activity. There are still instances where grantees are confused on how to attribute the costs of staff that undertake an eligible activity. The HOPWA regulations were amended in 1992 to help clarify this as it applies to administrative costs. Under the definition at 24 CFR 574.3, allowable administrative costs *do not include costs directly related to carrying out eligible activities, since those costs are eligible as part of the activity delivery costs of such activities.* In the case of a program that involves staff that delivers a supportive service, such as client counseling, the staff costs must be credited to that supportive service activity. To the degree that staff might also be engaging in grant administration, costs must be reasonably prorated between the activity costs (and administrative costs are limited by statute, 3 percent for grantees and 7 percent for project sponsors for the amount that the project sponsor is receiving) if reimbursed from HOPWA funds. Most projects are likely to involve other sources of funds. Records on staff time should be maintained in order to document the division of staff time between applicable funding sources. This concept also applies to operation costs for housing activities, and the costs of staff that carry out the housing activities, such as maintenance, security, housing search and placement, etc. In some cases, grantees have applied these housing costs to supportive services, but should assign them to the appropriate type of housing activity that is being undertaken to ensure that performance data is accurate in reflecting the costs for delivering these activities with Federal funds. The 2005 NOFA also clarified for the first time that reasonable costs for first months rent and security deposits are to be categorized as a permanent housing placement cost (as a supportive services) and not listed as a rental assistance or short term rent cost.

(H) Notification. For applications that were selected without conditions, or when such

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conditions have been satisfied, the field office must send a notification letter, Attachment 6, to the applicant that provides a separate budget line item breakdown of funds approved for groupings of HOPWA eligible activities and three copies of the grant agreement. With the letter and unsigned grant agreements, also transmit the grantee financial instructions. These are included in this memorandum as Attachment 7. The person authorized by the Applicant must sign the grant agreements and return them to the field office.

(I) Budget line items (BLI). For purposes of LOCCS setup under the program code HPAC, HOPWA funds should be grouped according to the following BLI categories consistent with the funding amounts approved in the renewal performance grant agreement in Exhibit B. [Note these were the BLI established in 1992 and an update to separate the BLIs is now pending approval; if revised, the new BLI will use the same list of approved eligible activities, as shown in Attachment 2 and the application budget page.]

- 1010 Acquisition [not eligible for a renewal project];
- 1020 Rehabilitation and new construction, including conversion and repair [not eligible for a renewal project];
- 1030 Operating Costs including leasing;
- 1040 Rental Assistance;
- 1050 Supportive Services and other, including short-term rent, mortgage, and utility payments, technical assistance on community residences, [not eligible for a competitive grant in 2005] housing information services, and resource identification to establish, develop and coordinate housing assistance resources [not eligible for a competitive grant in 2005];
- 1060 Administrative Costs, including grantee and project sponsors costs; and
- 1120 Other (limited to approved HUD activities, and note that project outcome/data collection is not eligible for a competitive grant in 2005).

These four-digit numbers are unique to the HPAC program area and are not necessarily used for other HUD programs. BLIs are tracked in LOCCS and used in HOPWA voucher drawdowns.

(J) Leveraged Funds. Renewal and new project grantees have submitted information in their applications that evidenced the commitment of other funds to be used for housing and/or supportive services during the planned 3-year grant periods. The grantee will be required to report on the use of these leveraged commitments as shown on the list of HUD-approved list of commitments. To evidence the fulfillment of these commitments, HUD will revise and review the Annual Progress Report (APR) that will be filed each year. The field office may conduct on-sight monitoring to review documentation for the implementation of these commitments.

IV. DISTRIBUTION OF THE GRANT AGREEMENTS

Fully executed Grant Agreements are to be distributed as follows:

A. After the applicant has signed and returned the grant agreement to HUD, and HUD has signed the grant agreement, the field office is to send one copy of the fully executed grant agreement to the grantee using the transmittal letter, Attachment 8.

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B. Retain a copy of the grant agreement with original signatures for your files.

C. Send a copy of the grant agreement with original signatures and copy of the transmittal letter to the Fort Worth Accounting Center.

D. Send a copy of the executed grant agreement to the Office of HIV/AIDS Housing at Headquarters, correspondence code: DNH, Room 7212.

V. FUND ASSIGNMENT PROCEDURES

A. Headquarters will transmit the reservation of HOPWA Competitive funds to each field office. A copy of the headquarters transaction will be forwarded to appropriate field offices for processing and information.

B. As with HOPWA formula programs, individual competitive grant amounts will be reserved in the Program Accounting System (PAS) from an electronic file processed by the CFO headquarters accounting office; therefore, HUD 718s will not be needed for the reservation of these funds. However, when grant agreements are sent to the Fort Worth CFO accounting office, please ensure that the agreements include the Region and Field Office number; Appropriation (0308) and PAS Program Code (CWF); Source Year and PAS FY Indicator.

C. When the grant agreement is fully executed, a copy with original signatures is to be sent to the Fort Worth Accounting Center and the Fort Worth Accounting Center will record the obligation of the funds.

VI. THE START-UP CONFERENCE

As may be needed, field offices may find it beneficial to hold training conferences with the new project staff and for any new or inexperienced staff for these renewal grantees, including a review of the grant conditions, alerts and other notes provided in attachment 2. Field offices could cover the following items:

A. How to Utilize the LOCCS/Voice Response System. Field offices should discuss how to access HOPWA competitive funds and familiarize each grantee with the disbursement system; see Attachment 7. Ensure that grantees have copies of HUD-27053-A, which are available from your finance office.

B. Eligible Clients and Activities. Hold a general discussion on program eligibility issues, income determinations, and general documentation of their records for the files.

C. HUD Reporting Requirements. Review the HOPWA Annual Progress Report (APR) being revised for use in 2005 (see the HOPWA webpage for the final version), and stress reporting requirements; see Attachment 9.

D. HOPWA Grant Agreements. Review the provisions of the HOPWA Performance

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Grant Agreement and answer any questions from the grantee.

E. Terms of Contract. Grantees should be alerted that funds should be expended within the 3-year period. Program regulations at 574.540 provide for possible deobligation of unspent program funds after that point. Grant performance should be monitored to ensure that grants maintain stable operations during this period.

F. Administrative Costs. As defined in 574.3, administrative costs under the HOPWA Program are permitted for a grantee, not to exceed 3 percent of the grant, and for a project sponsor, not to exceed 7 percent of the amount that the project sponsor receives.

VII. DISBURSEMENTS

Instruct grantees to retain signed vouchers in their records for periodic inspection by HUD. They should not send vouchers directly to the Field Office, to the Fort Worth Accounting Center, or to Headquarters. Upon inspection, compare the information on the voucher to the request for payment made through the LOCCS-VRS for consistency.

VIII. CHANGES AFTER GRANT AGREEMENT

Field offices reviewing any proposed budget and activity change(s) should consider how any change might affect how the application was initially competitively rated. The regulations, at 24 CFR 574.260, establish a process for making amendments to competitive grants. Please consult the Office of HIV/AIDS Housing if you find that the applicant's revisions significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons served.

Additionally, the office, in conjunction with program counsel, has developed a grant extension form (Attachment 10) to be used when granting an extension to any existing HOPWA grant agreement. The dates to be used in this extension form are limited and refer to the date that the original grant agreement was signed by HUD and the grantee. The term of the grant agreement is covered at 24 CFR 574.540 in establishing up to a three-year use period for this grant. The expiration date is the date that is three years from the date of the original grant agreement date (or three years from the project start date that was agreed to in the original grant agreement that may be later than the signing date). Consistent with OMB-circulars and 24 CFR 84.25 (e)(2), the additional period can only run up to one additional year from this original expiration date. Importantly, extensions must be approved before the original expiration date occurs. The original grant extension should be retained in the grantee's file and a copy sent to the Office of HIV/AIDS Housing.

Further, the grantee can move up to 10% to an approved budget line item (BLI), by a written request letter or email. The FO must be advised of change and issue an approval. As the program operates with statutory limits on administrative costs for grantee and project sponsors and NOFA standards such as caps on supportive services and commitments of leveraged funds, not all changes can be approved. The FO should consult with or otherwise advise this office, at least so the national database is updated to reflect the BLI changes. A new LOCCS spread sheet

must be submitted by the FO to Ft. Worth, TX so that the revised funds will be accountable in LOCCS.

The financial instructions in Attachment 7 were originally amended for the 2004 competitive operating instructions (December 8, 2004) and addressed this complicated manner. This repeats that new section.

Budget Line Item Changes

For all approved BLIs, a grantee may request reimbursements for up to 100 percent of the amount approved for the BLI for actual costs incurred for these activities. If a change is identified as needed, the grantee must request the change with a justification and submit the request for FO approval. Grantees must follow the regulation at 24 CFR 574.260 in making any amendments to their HUD-approved competitive grants, including adjustments to the approved budget line items, performance goals, leveraged commitments or other planned activities.

Section 574.260 provides provisions calling for justification by the grantee and HUD approval for changes that significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons. The grantee must provide a copy to HUD of any other amendment (i.e. insignificant changes) to the application for review in order to accept the change. Non-substantial changes in BLIs, as defined below, may impact the scope or number of eligible persons served in an insignificant manner, thereby failing to trigger the justification and approval requirements, while still requiring HUD acceptance to be put into effect.

The grantee can document BLI changes through two means:

(1) Through HUD acceptance of non-substantial changes. A non-substantial change involves a small amount of funds, not greater than 10 percent of the approved BLI to which funds would be added, and for larger BLIs also not greater than \$50,000, a substitution of leveraged commitments for supportive services match of at least equal value to the original HUD-approved commitment, adjust client outcome estimates, or other such limited actions. The grantee may notify the FO (in writing) of the amount of funds to be transferred from the affected BLIs and describe the revised proposed use of funds. The request will be reviewed and may be accepted by the FO, if eligible as further describe under paragraph (3). If the FO concurs with the change, the FO will register any needed edit in the appropriate BLIs in LOCCS. The FO will notify the grantee that the change has been accepted or not and the effective date for the change, including a date as early as the date the need for a change was identified.

(2) Through HUD approval in advance for a substantial change. A substantial change would involve a request to add more than 10 percent of the amount approved for any BLI, or more than \$50,000, establish a new BLI, affect the approved housing outputs established in the performance grant agreement, decrease the amount of other leveraged funds that were committed to be used for supportive service activities pursuant to a match

requirement, or otherwise make any change that will significantly alter the scope, location, service area, or objectives of an activity or the number of persons served the grantee must request a grant agreement amendment in writing to the FO. The grantee must explain the reason for the transfer, provide an assessment on the impact on the approved project plans, and address how the change would be beneficial to addressing the permanent housing needs of HOPWA eligible persons in their service area. Such changes might implicate two limits established in the NOFA on (i) the limit on the amount of increase allowed to the grantee's prior budget line item of up to 120 percent of the original BLI amount; and (ii) the restriction on adding costs for a new BLI. If the grant agreement is approved by the FO following agreement with the Office of HIV/AIDS Housing, the FO will prepare a grant amendment to be signed by the grantee and that Office with a proposed future effective date for the change. Once the amendment is signed and in effect, the FO will redistribute funds between BLIs, and the grantee may request access to such funds accordingly.

(3) Some BLI changes are not eligible, including those which exceed statutory limits for administrative costs for the grantee (i.e. at not more than 3 percent of the grant award) or for a project sponsor (i.e. at not more than 7 percent of the grant funds received by this sponsor). Also, some changes are not encouraged, including any affecting other limits established in the 2004 NOFA. A change would not be encouraged that is inconsistent with: (i) the limit on the amount of supportive services that may be eligible as HOPWA costs (i.e. not more than \$455,000); (ii) the exclusion of costs for technical assistance or resource identification activities; (iii) the match conditions for the amount of the BLI approved for supportive services based on HUD's review of evidence that other funds are committed to be used for supportive services through other leveraged resources that at least match the amount of HOPWA funds approved for such activities; and the exclusion for costs for additional capital development activities that involve new facilities or sites.

(4) Some changes may not require a grant amendment, including changes that do not change an approved BLI or significantly alter the scope, location, service area, or objectives of an activity or the number of persons served the grantee. The regulation states that in these cases involving any other amendment to the application that these could be made by the grantee and the grantee is required to provide a copy to HUD. Such changes could involve the type of supportive service activities which are undertaken in connection with the permanent housing program components, adjustments in the planned types of operating costs for housing facilities, changes in housing information services or program plans for administering the approved activities, or other such adjustments to improve the responsiveness or appropriateness of the assistance provided under their approved performance grant agreement.

(5) The following procedures are recommended for submission and review of grant changes. An official representative of the grantee should request the transfer of funds in writing, by letter or email to the Community Planning and Development Division FO Director, describing the reason(s) for the transfer, the month and year for the funds to be transferred, the amount of funds being transferred to each budget line item and a

proposed budget of the old and new line items. The transfer of such funds must be approved/accepted or denied by the FO in writing (by letter or email) with notification to the grantee and HUD staff administering the financial transactions in LOCCS. In the case of a substantial amendment, the change would be recorded in a signed performance grant agreement amendment that would be prepared by the FO and signed by the FO and the grantee. Under no circumstances would a grantee be authorized to expend funds for a substantial change prior to HUD approval of the requested change.

IX. CLOSE OUT PROVISIONS.

Standard grant close out provisions are found at 24 CFR Part 85 – Administrative Requirements for Grants and Cooperative Agreements to State, Local Governments and Non-Profit Organizations, OMB Circular A-110)

BEFORE YOU CLOSEOUT: Subpart C –Post (grant) Award Requirements:

Sec. 85.26: Basic rule, Grantees and sub-grantees are responsible for obtaining audits in accordance with the “Single Audit Act Amendments of 1996 (USC 7501 –7507)”

Sec. 85.50: CLOSEOUT:

- A) General. The federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.
- B) Reports. Within 90 days after the expiration or termination of the grant, the grantee **MUST** submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe.

These may include but are not limited to:

- 1) Final performance reports
 - 2) Financial status reports, and/or requests for reimbursement reports
 - 3) Final request for payment
 - 4) Invitation disclosure (if applicable)
 - 5) Federally-owned property reports (e.g.: property, both real and personal acquired with funds from the grant)
-
- a) A grantee must make an inventory of all owned property for which it is accountable and request disposition instructions for the Federal agency of the property no longer needed. Cost adjustments if any will be made by the Federal agency within 90 days after receipt of the report.
 - b) The Federal agency will make prompt payment to the grantee for allowable reimbursement costs (or) If applicable, the grantee must immediately refund tot the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

The HOPWA Close out procedures require the following submissions:

1. Narrative. (Executive Summary) which describes all activities carried out with grant funds. List all performance measures achieved, benchmarks achieved, numbers and demographics of persons served. Numbers of housing units provided, Type of housing assistance and supportive services provided.
2. Complete Standard form 269. (Financial Status Report – Long form)
3. Complete the audit certification or submit evidence that all expended grant funds were audited in accordance with OMB circular A-133. (See sample of Certificate language)

Example Closeout Letter

LETTERHEAD OF RECIPIENT

Name of Recipient: _____

Grant Agreement Number: _____

Certification of Recipient

It is hereby certified that all activities undertaken by the Recipient with funds provided under the grant agreement identified above, have to the best of my knowledge, been carried out in accordance with the grant agreement. That proper provision has been made by the Recipient for payment of all unpaid costs and unsettled third party claims identified on line 10m of the attached “Financial Status report” (SF-269). The United States of America is under no obligation to make any further payment to Recipient under the grant agreement excess of the amount identified on line 10n of SF-269. That every statement and amount set fourth in said instrument is, to the best of my knowledge, true and correct as of this date. If any portion of the grant amount has been audited at the time of the execution of this certification, the Recipient agrees that the unaudited portion of this grant will be included in the next periodic audit of the Recipient (as required by OMB circular A-133 which implements the single audit act of 1984, P.L. 98-502). In the event any cost is disallowed by the audit is sustained by HUD after consultation with the Recipient, such amount shall be refunded to HUD.

Signature of Recipient

Date

X. NOTICE TO NON-SELECTED APPLICANTS/DEBRIEFINGS.

The Office of HIV/AIDS Housing has notified the applicants who were not selected for funding. While offering an explanation as to why the application failed to be funded. These applicants and selected applications may both benefit from a debriefing on their application. Consistent with the standards stated in the SuperNOFA, a debriefing may be scheduled after 30 days and before 120 days of the announcement of awards by written request. Please direct interested parties to Paula Smith at (202) 708-1934 extension 7041.

XI. HOPWA TECHNICAL ASSISTANCE.

If projects need assistance in the startup or operation of these efforts, please contact one of the National HOPWA Technical Assistance providers. For the most recent information on the status, scope, and the geographic areas of service of HOPWA technical assistance providers, please visit the HOPWA website at “<http://www.hud.gov/offices/cpd/aidshousing/>”. Please note that in lieu of a demand/response system, these grantees are available to provide assistance in your community and may be contacted directly by your office or via this office.

Questions about these instructions on the HOPWA program should be directed to Paula Smith in the Office of HIV/AIDS Housing HOPWA@hud.gov. Thank you for your interest and dedication to the HOPWA program.

Note: This Document contains 12 “Attachments” which are hereby incorporated by reference and listed on the following page.

**LIST OF ATTACHMENTS
HOPWA RENEWAL OPERATING INSTRUCTIONS**

Attachment 1 - Description of the 2005 HOPWA Grant Selections*

Attachment 2 - List of Conditions on Selected Applications * [becomes Exhibit B to the grant agreement, including any negotiated revisions on housing outputs]

Attachment 3 – Letter sending the grant agreement*

Attachment 4 - HOPWA 2005 Renewal and New Projects Performance Grant Agreements (2 forms)*

Attachment 5 - HOPWA Regulations as of 4-1-05, 24 CFR part 574, are found at this website

http://www.access.gpo.gov/nara/cfr/waisidx_05/24cfr574_05.html

Attachment 6 – [reserved]

Attachment 7 - Grantee Financial Instructions and LOCCS information*

Attachment 8 - Letter to return copies of signed documents*

Attachment 9 – [Reserved for the HOPWA Annual Reporting – The Annual Performance Report (11/97) to be sent at a later date, including the use of the logic model. This APR will be revised and issued with training for use in 2005; Please check the webpage for the latest version of the APR and appropriate instructions.]

Attachment 10 - HOPWA Grant Extension

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Attachment 11 – Amendment to Change Term for Renewal Startups

Attachment 12 – Early Termination for Renewal Startups

* Sent to all HUD Field Offices on a Word file; documents can also be found on the HOPWA homepage at <http://www.hud.gov/offices/cpd/aidshousing/programs/index.cfm>.